

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Oswaldo Valverde, on behalf of himself
and all other persons similarly situated,

Plaintiff,

- vs. -

Marbren Tire Co., Inc. and Mark Brenner,

Defendants.

DOCKET NO. 18-cv-5677 (DLI)(RML)

JOINT CIVIL PRETRIAL ORDER

Dora L. Irizarry, U.S. District Judge:

The following matters have been agreed to by counsel, and are hereby ordered:

I. COUNSEL

Plaintiffs' Counsel

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II. SUBJECT MATTER JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1337(a). This case involves a suit under the Fair Labor Standards Act, 29 U.S.C. § 216(b), alleging violations of the overtime provisions of 29 U.S.C. § 207, creating a federal question. The state claims alleged in the complaint are claims arising under parallel provisions of New York's Labor Law, and/or New York Labor Law claims sharing a common nucleus of facts with plaintiffs' federal claims.

III. **CLAIMS AND DEFENSES WHICH REMAIN TO BE TRIED**

Plaintiffs' claims

- 1) Failure to pay overtime, FLSA. Plaintiffs regularly worked in excess of forty hours per week but were not paid time-and-a-half overtime premiums for those overtime hours worked. 29 U.S.C. § 207.
- 2) Failure to pay overtime, NYLL. Plaintiffs regularly worked in excess of forty hours per week but were not paid time-and-a-half overtime premiums for those overtime hours worked. 12 N.Y.C.R.R. § 142-2.2
- 3) WTPA - Failure to provide wage notices: Plaintiffs never received wage notices providing defendants' contact information and plaintiffs' manner of pay and regular and overtime rates of pay. N.Y. Lab. Law § 195(1); N.Y. Lab. Law § 198.
- 4) WTPA – Failure to provide weekly pay statements: Plaintiffs never received accurate weekly wage statements (e.g., paystubs) at any point during their employment. N.Y. Lab. Law § 195(3); N.Y. Lab. Law § 198

Defendants' Defenses

- 1) Defendants claim that payments of wages were made to the plaintiffs and that defendants are due credit for such payments against any damages if any assessed.
- 2) Defendants claim that payments that were made by defendants and payments received by plaintiffs were in accordance with applicable minimum wage rates and overtime wage premiums as set forth in the FLSA and the New York Labor Law.
- 3) Defendants claim that they made complete and timely payment of all wages due plaintiffs and under NYLL 198 1-b are not liable under Section 195 (1) NYLL for any failure to provide to the plaintiffs notice under Section 195(1) of the NYLL.
- 4) Defendants claim that they reasonably believed in good faith that they were not required to provide the employee with notice and under NYLL 198 1-b are not liable under Section 195(1) NYLL for any failure to provide to the plaintiffs such notice.
- 5) Plaintiffs variously took off time from work for personal and vacation days.
- 6) Plaintiffs did not work the same hours and/or days every week as claimed.

IV. JURY TRIAL / LENGTH OF TRIAL

This will be a bench trial. The parties estimate that the trial will be two days.

V. TRIAL BY MAGISTRATE

The parties have not consented to trial by magistrate.

VI. STIPULATED FACTS AND LAW

Stipulated Facts

- 1) Defendant Marbren Tire Co., Inc. is a New York corporation with a principal place of business at 32-16 Hunters Point Ave., Long Island City, New York.
- 2) Defendant Marbren Tire Co., Inc. operates a business in Queens that sells and installs tires.
- 3) Defendants are employers subject to enterprise coverage under the Fair Labor Standards Act..
- 4) Defendant Mark Brenner is president and 100% owner of Marbren Tire Co.
- 5) Defendant Mark Brenner has the authority to hire and fire employees of Marbren Tire Co. and set their schedules and pay.
- 6) Defendant Mark Brenner has the authority to maintain employment records for employees of Marbren Tire Co.
- 7) Plaintiffs Oswaldo Valverde, Emilio Flores, and Diego Giraldo were employed by Marbren Tire Co. in the state of New York.
- 8) Defendants did not have a time clock or written time sheets for employees to use until January 2019.

Stipulated Law

- 1) The parties have not agreed on any stipulated law.

VII. WITNESSES

Plaintiffs' witnesses

Plaintiffs anticipate calling the following fact witnesses to testify, about the following topics:

- 1) Oswaldo Valverde. Mr. Valverde is a plaintiff. He will testify as to the hours he worked and the compensation he received, as well as defendants' overall pay and recordkeeping practices.
- 2) Emilio Flores. Mr. Flores is a plaintiff. He will testify as to the hours he worked and the compensation he received, as well as defendants' overall pay and recordkeeping practices.
- 3) Diego Giraldo. Mr. Giraldo is a plaintiff. He will testify as to the hours he worked and the compensation he received, as well as defendants' overall pay and recordkeeping practices.
- 4) Ramon Segarra. Mr. Segarra is defendants' former bookkeeper. He will testify as to defendants' pay practices.
- 5) Mark Brenner (via deposition testimony): Mr. Brenner is a named individual defendant in this case. We will introduce deposition testimony from Mr. Brenner about his role at the business, and about the business's pay and recordkeeping practices.

Defendants' witnesses

Defendants anticipate calling the following fact witnesses to testify, about the following topics:

- 1) Mark Brenner, on behalf of both defendants.
- 2) Plaintiffs (via deposition testimony) will testify as to their work, their wages and other facts concerning their employment that is the subject of this lawsuit.

Plaintiffs reserve the right to object to any witness not previously disclosed to plaintiffs.

VIII. EXHIBIT LISTS

Plaintiffs' exhibits

Exhibit No.	Description	Objection/Basis	Response to Objection
1	Defendants' Responses to Requests for Admissions	Fre 401:Relevance Fre: 403:Prejudicial	Facts admitted to by defendants about plaintiffs' employment

			are probative.
2	Defendants' Responses to Interrogatories dated May 19, 2019.		
3	Valverde paystub slips – Bates Stamped Valverde000002		
4	Valverde payroll charts for 2012 – 2018 produced by defendants and not Bates Stamped		
5	Flores paystub slips – Bates Stamped Valverde000046 – Valverde000081 and Flores 3 – Flores 38		
6	Flores payroll chart for 2017-2018 produced by defendants and not Bates Stamped.		
7	Flores paystub dated March 25, 2014 produced by defendants and not Bates Stamped		
8	Flores paystub dated January 2, 2019 produced by defendants and not Bates Stamped		
9	Giraldo paystub slips – Bates Stamped Valverde000082 – Valverde000088		
10	January 30, 2012 letter from Mark Brenner regarding Valverde Pay		
11	Other Flores paystubs produced by defendants and not Bates Stamped (for impeachment/rebuttal)		
12	Flores time clock records produced by defendants and not Bates Stamped (for impeachment/rebuttal)		
13	Other Giraldo paystubs produced by defendants and not Bates Stamped (for		

	impeachment/rebuttal)		
14	Giraldo time clock records produced by defendants and not Bates Stamped (for impeachment/rebuttal)		

Plaintiffs reserve the right to object to any exhibit of defendants not previously provided to plaintiffs, or any document inadmissible on any evidentiary ground pursuant to the Federal Rules of Evidence. Plaintiffs further reserve the right to use any relevant, admissible evidence identified by defendants on defendants' exhibit list.

Defendants' exhibits

Exhibit No.	Description	Objection/Basis	Response to Objection
1	W-4 statements of Oswaldo Valverde;		
2	January 30, 2012 letter from Marbren		
3	Wage charts for period 1/7/12 thru 8/25/18 for Oswaldo Valverde		
4	Ledger book pages for Oswaldo Valverde		
5	Unemployment Decision of November 8, 2018 regarding Oswaldo Valverde	FRE 401: Relevance. FRE 802: Hearsay	
6	Ledger book page for Diego Giraldo		
7	Wage statements/Payroll Sheets for Diego Giraldo		
8	W-4 statement of Diego Giraldo		
9	Paychex wage statements for Diego Giraldo		
10	Time Sheets for Diego Giraldo		
11	W-4 statements of Emilio Flores		
12	Travelers letter of 7/12/18 regarding Emilio Flores	FRE 401: Relevance FRE 802: Hearsay	
13	Employers C-240 Statement of		

	Wages regarding Emilio Flores		
14	Employers Report dated 7-17-18 regarding Emilio Flores	FRE 401: Relevance	
15	Wage Chart for Emilio Flores		
16	Employee Detail reports for Emilio Flores		
17	Wage statements/Payroll Sheets for Emilio Flores		
18	Wage statements/paystubs for Emilio Flores		
19	Ledger book pages for Emilio Flores		
20	Paycheck wage statements for Emilio Flores		
21	NYS Dept of Labor Cross Match Unit communication regarding Diego Giraldo	FRE 401: Relevance FRE 403: Prejudicial FRE 802: Hearsay	
22	Defendants Exhibit A marked on 11-20-19		
23	Defendants Exhibit A-1 marked on 11-20-19		
24	Defendants Exhibit A-2 marked on 11-20-19		
25	Defendants Exhibit A-4 through A10 marked on 11-20-19		
26	Defendants Exhibit A-11 through 18 marked on 11-20-19		
27	Defendants Exhibit A1 marked on 8-5-20		
28	Defendants Exhibit A-2 marked on 8-5-20		
29	Defendants Exhibit B marked on 8-5-20		
30	Defendants Exhibit C and C-1 marked on 8-5-20		
31	Defendants Exhibit D marked		

	on 8-5-20		
32	Defendants Exhibit E and E1 marked on 8-5-20		
33	Defendants Exhibit F marked on 8-5-20		
34	Defendants Exhibit G and G1 marked on 8-5-20		

Defendants reserve the right to object to any exhibit of plaintiffs not previously provided to defendants, or any document inadmissible on any evidentiary ground pursuant to the Federal Rules of Evidence. Defendants further reserve the right to use any relevant, admissible evidence identified by plaintiffs on plaintiffs' exhibit list.

IX. PROPOSED MOTIONS IN LIMINE

None.

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Service of a copy of this Order shall be made by the Clerk of this Court by forwarding a copy hereof to all parties.

Dated: Brooklyn, NY
_____, 2020

DORA L. IRIZARRY
United States District Judge